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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/542,144

07/13/2005

Juan Ramella

P70596US0

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EXAMINER

WIEST, PHILIP R

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

11/20/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/542,144	Applicant(s) RAMELLA, JUAN	
	Examiner Phil Wiest	Art Unit 3761	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 October 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as ~~set forth~~ above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL -324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: 5-9, 11, 16, 17, 19 and 20.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-4, 10 and 18.
- Claim(s) withdrawn from consideration: 12-15.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

TATYANA ZALUKAEVA
 SUPERVISORY PRIMARY EXAMINER

Wiest

Continuation of 3. NOTE: The proposed limitation to the claims changes the scope of claims 1, 2, 5 -9, 11, 16, 17, 19, and 20. If entered, it would require new consideration for these claims.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the prior art does not teach or suggest a bicompartiment bag having one compartment filled with a powdered solute. This argument has not been found persuasive. Rochat and Macabasco disclose the device of claim 1 as previously presented, but do not disclose that the device may be used to preparing dialysis solution. Mathieu teaches a method of preparing a dialysis solution comprising passing water from one compartment (which contains powdered sodium bicarbonate) through a filter and into a second compartment such that a dialysis solution is produced while the solid sodium bicarbonate powder is filtered out (Column 9, Line 55 through Column 10, Line 9). The use of sodium bicarbonate powder in this manner to create dialysis solution by passing fluid from one compartment of a system to another compartment in this manner is well established in the art. The device is similar to the device of Rochat in that it comprises two compartments that are separated by a filter. Furthermore, the process of filtering a fluid in a single, bi-compartment bag separated by a filter is clearly disclosed by Rochat. It would have been obvious to one of ordinary skill in the art at the time of invention to perform the dialysis fluid-creating method of Mathieu in a bi-compartment bag, as taught by Rochat, in order to allow for dialysis fluid to be created by passing fluid through a single container. Furthermore, because the sodium bicarbonate powder must be prevented from mixing with the blood, it is obvious that the sodium bicarbonate solution would be provided on the inflow side of the filter, such that the filter prevents the powder from mixing into the dialysis solution.

With respect to applicant's argument that Rochat, Macabasco, and Verkaart do not disclose a bicompartiment bag having one bag filled with a powdered solute, the proposed amendment to claim 1 has not been entered. Even if the amendment had been entered, the claims would have been rejected as obvious over Mathieu.